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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,732	02/25/2004	James E. Haley	40030-10087	2743
21788	7590	11/03/2006	EXAMINER	
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			CARTAGENA, MELVIN A	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/786,732	HALEY, JAMES E.	
	Examiner	Art Unit	
	Melvin A. Cartagena	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 24, 2006 has been entered.

### ***Claim Objections***

2. Claim 20 is objected to because of the following informalities: There is a typographical error in line 14 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 3, 8, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,398,652 to Ueda et al.

Ueda shows a bottle stopper device as seen in Figs. 12, 13A and 13B, having a lower portion A with a length 16 to be inserted in the opening of a container, a upper portion B extending from the opening of a container when installed in a container and defining a plurality of pour openings 1 and 2, an air passageway 12 extending along the element 11(C) adjacent the

Art Unit: 3754

lower portion, an substantially encircle by the pour openings, the smaller diameter of pour opening 2 visually identifies the location of the air passageway relative to the pour openings.

In reference to claim 18:

Ueda shows a stopper and spout to be used on a container for pouring the content of the container that in include the steeps of visually determining the proper orientation of the spout an tilting the container in that orientation to pour.

In reference to claim 20:

Parker shows a stopper manufactured with the characteristics described above.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,398,652 to Ueda et al.

Ueda shows in Figs. 12-13B all claimed features as discussed above except for the visual indicator being a protuberance located at about 180 degrees from the air passageway. In Figs. 8-10B, Ueda shows a protuberance 3' located at about 180 degrees from the air passageway 12. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Figs. 12-13B to include a protuberance as seen in Figs. 8-10B to guide the stream flowing out of the dispensing opening.

Art Unit: 3754

With respect to claim 6, the length the spout extends from the upper portion presents no novel or unexpected result over the length of the spout used in the references. Use of such a dimensions in lieu of those used in the references solves no stated problem and would be an obvious matter of design choice within the skill of the art. In re Launder, 42 CCPA 886, 222 F.2d 371, 105 USPQ 446 (1955); Flour City Architectural Metals v. Alpana Aluminum Products, Inc., 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); National Connector Corp. v. Malco Manufacturing Co., 392 F.2d 766. 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799 (1968).

7. Claims 4, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,398,652 to Ueda et al. in view of US 4,128,189 to Baxter.

Ueda shows all claimed features as discussed above but is silent about the spout having different colors, an anti-drip spout and a sloped mouth. Baxter shows a spout and cover of different colors, an anti-drip feature, see column 3, lines 26-31, and sloped mouth 78. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use any various color in combination with an anti-drip feature with a sloped mouth in the device of Ueda as taught by Baxter in order to fit into a harmonious color style with the remainder of the container including the label on the container and prevent any product remaining in the spout after use from drying and clogging the spout.

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,398,652 to Ueda et al. in view of US 5,228,603 to Pham et al.

Ueda shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham

Art Unit: 3754

show a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Ueda to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a stand to prevent miss placing the cap.

9. Claims 14-17, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,398,652 to Ueda et al. in view of US 3,168,221 to Parker.

Ueda shows all claimed features as discussed above except for an integrally formed cap attached to the upper end of the body with an integrally sealing ring. Parker shows a flexible bottle stopper as seen in Fig. 3, having a cap 24 attached to the stopper by a flexible strand 25 and seals at the ring 26. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Ueda to include a cap to provide means to seal the container and preserve the content of the container during the container is not in use or during storage as taught by Parker.

In reference to claim 19:

The Ueda-Parker combination shows a stopper and spout to be used on a container for pouring the content of the container that include the steps of visually determining the proper orientation of the spout and tilting the container in that orientation to pour.

In reference to claim 21:

The Ueda-Parker combination shows a stopper manufactured with the characteristics described above.

Art Unit: 3754

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

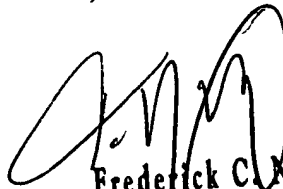
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ruetz shows a dropper insert.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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10/30/06  
Frederick C. Nicolas  
PRIMARY EXAMINER